

September 15, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands* – WT Docket No. 03-66 –
WRITTEN EX PARTE PRESENTATION

Dear Ms. Dortch:

I am writing on behalf of the Wireless Communications Association International, Inc. ("WCA") to address recent correspondence from the National ITFS Association ("NIA") and the Catholic Television Network ("CTN") regarding the proposals pending before the Commission to provide an opportunity for a Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") licensee to "self-transition" to the new 2.5 GHz bandplan.¹

WCA originated the self-transition concept in reaction to the Commission's proposal to strip the license from any BRS and EBS licensee that had not been transitioned to the new bandplan by a Proponent prior to a date certain.² WCA proposed to soften the impact of that proposal by providing a brief window, after the deadline for submission of market-wide Initiation Plans expires, for any BRS or EBS licensee that is not covered by a Proponent-filed Initiation Plan to transition its own facilities to the new bandplan.³ WCA's proposal was designed to assure that even those licensees that cannot afford to fund the transition of an entire market to the new bandplan as contemplated by the *Report and Order* had an opportunity to

¹ See Letter from Edwin N. Lavergne to Marlene H. Dortch, WT Docket No. 03-66 (filed Sept. 8, 2005).

² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14266 (2004) [*"Report and Order and FNPRM"*].

³ See Petition of Wireless Communications Ass'n Int'l, Inc. for Partial Reconsideration, WT Docket No. 03-66, at 37-39 (filed Jan. 10, 2005) [*"WCA Petition"*].

Marlene H. Dortch
September 15, 2005
Page 2

retain their licenses and provide service on their spectrum under the new bandplan. Not surprisingly, the self-transition concept has been uniformly embraced by those commenting.⁴

In their recent correspondence, NIA and CTN urge the Commission to assure that EBS licensees are reimbursed for their costs of self-transitioning by those who subsequently deploy commercial services in the relevant market. As WCA has made clear in earlier filings in this docket, it has no objection to that requirement, provided it is properly cabined to prevent abuse. More specifically, WCA has proposed the following:

- To deter an EBS licensee from “gold plating” its system during self-transition with the intention of passing the excessive costs on to subsequent commercial operators, the Commission should make clear that subsequent commercial users of the spectrum are only required to reimburse reasonable and prudent costs incurred in the self-transition process.⁵ The Commission has addressed this concern in crafting similar plans, and there is no reason to depart from that precedent here;⁶

⁴ See, e.g. Petition of Sprint Corp. for Reconsideration, WT Docket No. 03-66, at 4-5 (filed Jan. 10, 2005); Petition of National ITFS Association and Catholic Television Network for Reconsideration, WT Docket No. 03-66, at 5-7 (filed Jan. 10, 2005); Petition of Hispanic Information & Telecommunications Network, Inc., WT Docket No. 03-66, at 4-6 (filed Jan. 10, 2005); Petition of Grand Wireless for Reconsideration, WT Docket No. 03-66, at 2 (filed Jan. 10, 2005); Comments of Clearwire Corp., WT Docket No. 03-66, at 8 (filed Jan. 10, 2005); Comments of SpeedNet, LLC, WT Docket No. 03-66, at 3-4 (filed Jan. 10, 2005).

⁵ For example, the Commission should leave no doubt that an EBS licensee engaged in self-transition may not seek reimbursement for the migration of more video tracks to the Middle Band Segment (“MBS”) than it is permitted during a Proponent-driven transition pursuant to Section 27.1233(b)(1). See Consolidated Opposition of Wireless Communications Wireless Ass’n Int’l, Inc. to Petitions for Reconsideration, WT Docket No. 03-66, at 20 (filed Feb. 22, 2005) [“WCA Opposition”]. Under that rule, an EBS licensee is only entitled to migration of a simultaneous program track that contains EBS programming, that complies with Sections 27.1203(b) and (c), and that was being transmitted on December 31, 2002 or within six months prior thereto. If a licensee self-transitions to the new bandplan, it should be free to migrate whatever programming tracks it chooses to the MBS. However, subsequent commercial users of the spectrum should only be responsible for the costs associated with migrating program tracks meeting the Section 27.1233(b)(1) criteria.

⁶ See, e.g., *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, 12347 (2000) (“if the relocating party provides an incumbent with an extravagant and possibly unwise relocation premium, only reasonable relocation costs need be paid by subsequent entrants who benefit from the relocation.”); *Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, Second Report and Order, 12 FCC Rcd 2705, 2717-18 (1997) (addressing the reimbursement of microwave licensees that engage in self-relocation). In the microwave relocation context, the Commission was able to control potential gold plating by imposing absolute caps on the recoverable cost of a microwave link. See *id.* However, that approach will not work here because of the variety of different self-transitions. Most will merely involve retuning an existing transmitter, while a handful may involve deployment of a digitized system. Thus, no “one size fits all” solution will be appropriate in all cases. Rather, WCA suggests the Commission specify that a self-transitioning licensee should be entitled to reimbursement only of its reasonable and prudent costs to migrate

Marlene H. Dortch
September 15, 2005
Page 3

- Self-transition should only be permitted by a licensee that is not covered by an Initiation Plan submitted by a Proponent prior to the deadline for such plans. WCA, NIA and CTN all agree that allowing self-transitions before that time will needlessly complicate the Proponent-driven transition system that remains the preferred approach for managing the complex transition process;⁷
- The costs of a self-transition should be allocated among subsequent commercial operators based on their overlapping spectrum holdings and population within the appropriate service area;⁸
- Whenever an EBS licensee engages in a commercial activity using its spectrum, either directly or through leasing, it should be responsible for reimbursing self-transition costs of other EBS licensees in the market.⁹ Whether the commercial service provider is a BRS licensee or an EBS licensee it should be of no moment – whatever the status of the entity, if it provides a commercial service, it should be required to reimburse eligible EBS self-transition expenses.

Finally, NIA and CTN suggest that the current language of Section 27.1233(c) can serve as an appropriate model for crafting a rule governing self-transition reimbursements. Unfortunately, WCA must disagree – the record before the Commission illustrates that Section 27.1233(c) lacks sufficient detail to prevent future disputes before the Commission regarding transition-related reimbursements.¹⁰ Nonetheless, WCA firmly believes that by adopting the proposals it already has advanced, the Commission can correct the flaws in Section 27.1233(c) and that, as corrected, that rule can serve as a model here.

Pursuant to Section 1.1206(b)(1), this notice is being filed electronically with the Commission via the Electronic Comment Filing System for inclusion in the public record of the above-reference proceeding. Should you have any questions regarding this presentation, please contact the undersigned.

eligible programming to the MBS, and that any costs above the minimum necessary to accomplish that task are not reimbursable.

⁷ See Consolidated Reply of Catholic Television Network and National ITFS Association, WT Docket No. 03-66, at 8-9 (filed March 9, 2005); Consolidated Reply of Wireless Communications Ass’n Int’l, Inc., WT Docket No. 03-66, at 14-15 (filed March 9, 2005) [“WCA Reply”].

⁸ See WCA Opposition at 22.

⁹ See WCA Opposition at 21-22.

¹⁰ See, e.g. WCA Petition at 20-22; WCA Reply at 11-14.

Marlene H. Dortch
September 15, 2005
Page 4

Respectfully submitted,

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